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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,950	11/08/2006	Roger William Frank Ashton	10557/323978	1482
30550 7590 09/25/2009 DIANA HOUSTON SMITH & NEPHEW, INC. 1450 BROOKS ROAD MEMPHIS, TN 38116				
EXAMINER				
SWEET, THOMAS				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
09/25/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/559,950

Applicant(s)

ASHTON ET AL.

Examiner

Thomas J. Sweet

Art Unit

3774

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-14, 16-25 and 31-37 is/are pending in the application.
- 4a) Of the above claim(s) 12, 17-19 and 31 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35-37 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1, 3-11, 13-14, 16, 20-25, and 32-34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1, 3-11, 13, 14, 16, 20-25 and 32-37 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-11, 13, 16, 20-25 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Ralph et al. 5,888,204. Ralph et al. discloses a fixing assembly (fig. 6 or 7) for securing a fixing member to a prosthetic component (100), the fixing assembly comprising:

the prosthetic component (100) having either one of a female location feature (113) or a male location feature;

a fixing member (132) having the other of the female location feature and the male location feature (135), the male and female location features fitting together in use (as shown); and

a screw (126, more clearly seen in fig. 3) that passes through an aperture (at 133) extending through the fixing member (132) to secure the fixing member to the prosthetic component, the screw oriented in the aperture of the fixing member to secure purchase of the screw to a bone in which the prosthetic component is implanted, wherein disposition of the screw in the fixing member causes securing of the fixing member to the prosthetic component to occur

whether or not the screw gains purchase in the bone (i.e. the sphere on the head of the screw expands 133 to fit surface 135 to 113); and

wherein the fixing member is configured to connect rotatably to the prosthetic component (132 has a conical surface fitted to another conical surface which is fully capable of rotating until locked).

Regarding claim 4, each of the male and female location features have at least one corresponding undercut to form an interference fit in use (the thread 111 and conical surface 113 intersect at an under cut).

Regarding claim 5, the interference fit forms a dovetail joint (see fig. 6 or 7).

Regarding claim 6, the male location feature comprises at least one portion that is generally flat in profile (the ends, the annular surfaces are flat).

Regarding claims 8-11 and 13, the male location feature has a slit (133), such that the male location feature is divided into two arms.

Regarding claim 16, the screw has a thickened portion (sphere, 134) that pushes apart the two arms of the male location feature when the screw is screwed into the aperture of the fixing member.

Regarding claims 20 and 25, the prosthetic component is an acetabular cup (see fig. 1).

Regarding claim 22, the fixing member (132) is secured to an external surface of the prosthetic component (100 as shown).

Regarding claim 32, the female location feature (113) is located on the prosthetic component (100) and the male location feature (135) is located on the fixing member (132).

Regarding claims 33-34, the screw is threadably received in the aperture of the fixing member (132 include an annular thread, a peak at the throat of the opening for 134, and thread on 120 , trough between the sphere 134 and the other threads 126). (These threads engage to expand 132 in 110)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 24 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ralph et al. 5,888,204 in view of Ralph et al. 5,607,426. Ralph et al. (204) discloses a fixing assembly as discussed above further having a screw (126) external to the prosthetic component (100, the portion beyond the surface is external). Presuming the intent is that the whole screw is external to the prosthetic Ralph et al. (426) teaches another prosthetic having tabs (102 and 104) extending external to the prosthetic. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the tabs extending from the prosthetic as taught by Ralph et al. (426) on the prosthetic of Ralph et al. (204) in order to fasten down the prosthetic. Such a modification amounts to mere substitution of functionally equivalent fasteners in the art of prosthetics.

Claims 14 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ralph et al. 5,888,204. Ralph et al. (204) discloses a

fixing assembly as discussed above. However, Ralph et al. (204) does not disclose the location feature of the prosthetic component is at least partly located on a rim of the prosthetic component. Bone extends to the rim of the prosthetic so the holes (110) could be located anywhere up to the edge in order to anchor the cup (100) and the device would work equally well. Such a modification amounts to be mere engineering choice which is not patentably distinct from the prior art of Ralph et al. (204). It would have been obvious to one of ordinary skill in the art at the time the invention was made to move the holes near the edge of the cup of Ralph et al. (426) in order to fasten down the prosthetic to bone. Such a modification amounts to mere engineering choice.

Allowable Subject Matter

Claims 35-37 are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Sweet whose telephone number is 571-272-4761. The examiner can normally be reached on 6:45am - 5:15pm, Tu-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas J Sweet/
Primary Examiner, Art Unit 3774